

THAT THE
Lawful Successor

Cannot be

DEBARRED

From Succeeding to the

CROWN:

Maintain'd against *Dolman, Buchanman,*
and others.

BY

Sir GEORGE MACKENZIE

His Majesties Advocate.

EDINBURGH,

Printed by the Heir of *Andrew Anderson*, Printer to His most
Sacred Majesty, *Ann DOM. 1684.*

THE UNIVERSITY OF CHICAGO

PHYSICS

GRADUATE COURSE

PHYSICS 311

LECTURE NOTES

BY

DR. J. D. VAN DER POL

CHICAGO, ILL.

1928

EDITION

PRINTED BY THE UNIVERSITY OF CHICAGO PRESS

King James

In His Advice to

Prince Henry.

Page 173.

IF God give you not Succession, Defraud never the nearest by Right, whatsoever conceit ye have of the Person; for Kingdoms are ever at Gods Disposition, and in that Case we are but Liferenters, it lying no more in the Kings, than in the Peoples Hands to Dispossess the Righteous Heir.

Page 209. *Ibid.*

FOr at the very moment of the Expyring of the King Reigning, the nearest and Lawful Heir entereth in his place; and so to refuse him, or intrude another, is not to hold out the Successor from coming in, but to expel and put out their Righteous King:

()
King : and I trust at this time whole
France acknowledgeth the Rebellion of
the Leaguers, who upon pretence of He-
resie by force of Arms, held so long out,
to the great Desolation of their whole
Countrey , their Native and Righteous
King from possessing his own Crown and
natural Kingdom.

ERRATA.

Page 5. delet at his Majority. Page
33. for *Richard* 3d. Read 2d.

The

The Right of the Succession Defended.

THe fourth Conclusion to be cleared was, that neither the People, nor Parliaments of this Kingdom, could seclude the lineall Successor, or could raise to the throne any other of the same Royal line.

For clearing whereof, I shall according to my former method, first clear what is our positive Law in this case; Secondly I shall shew that this our Law is founded upon excellent reason, and lastly, I shall answer the objections.

As to the first. It is by the second Act of our last Parliament acknowledged, That the Kings of this realme deriving their Royal power from God Almighty alone, do lineally succeed thereto, according to the known degrees of proximities in blood, which cannot be interrupted, suspended, or diverted by any Act or Statute whatsoever, and that none can attempt to alter, or divert the said Succession, without involving the subjects of this Kingdom in Perjury and Rebellion, and without exposing them to all the fatal and dreadful consequences of a civil war. **DO THEREFORE** from a hearty and sincere sense of their duty Recognize, acknowledge and declare that the right to the Imperial Crown of this realme, is by the inherent
A
right

„ right and the nature of Monarchy, as well as
 „ by the fundamental and unalterable laws of
 „ this realme, transmitted and devolved by a
 „ lineal Succession, according to the proximity of blood. And that upon the death
 „ of the King or Queen, who actually reignes,
 „ the Subjects of this Kingdom are bound by
 „ Law, duty and alledgance to obey the
 „ next immediat and Lawful Heir either male
 „ or female, upon whom the right and administration of the Government is immediately devolved. And that no difference in
 „ Religion, nor no Law nor Act of Parliament
 „ made, or to be made, can alter or divert the
 „ right of Succession and lineal descent of the
 „ Crown to the nearest and Lawful Heirs,
 „ according to the degrees foresaids; nor can
 „ stop or hinder them in the full, free and
 „ actuall administration of the Government
 „ according to the Laws of the Kingdom.
 „ LIKEAS OUR SOVERAIGNE LORD, with
 „ advice and consent of the saids Estates of
 „ Parliament, Do declare it is high treason
 „ in any of the Subjects of this Kingdom,
 „ by writing, speaking, or any other manner of
 „ way to endeavour the alteration, suspension
 „ or diversion of the said right of Succession,
 „ or the debarring the next Lawfull Successor
 „ from the immediat, actual, full and free
 „ admi-

„administration of the Government, conform to the Laws of the Kingdom. And
 „that all such attempts or designs shall in-
 „ferre against them the paine of treason.

This being not only ane Act of Parliament, declaring all such as shall endeavour to alter the Succession, to be punishable, as Traitors; but containing in it a Decision of this Point by the Parliament, as the Supream Judges of the nation, and ane acknowledgement by them, as the representatives of the people, and nation. There can be no place for questioning a point, which they have plac'd beyond all contraverſie: especially ſeing it paſt ſo unanimoſly that there was not otly no vote given but even no argument propoſ'd againſt it. And the only doubt mov'd about it was, whither any Act of Parliament, or acknowledgement, was neceſſary, in a point which was in it ſelf ſo uncontraverſed. And which all who were not deſperat fanaticks, did conclude to be ſo in this nation, even after they had hear'd all the arguments that were uſ'd, and the Pamphlets that were written againſt it, in our neighbour-Kingdom.

But becauſe ſo much noiſe has been made about this queſtion, and that blind bigotry leads ſome, and humorous faction drawes others out of the common road. I conceive it

A 2.

will

will be fit to remember my reader of these following reasons, which will I hope clear that as this is our present positive Law, so it is established upon the fundamental constitution of our Government, upon our old Laws, upon the Laws of God, of Nature, of Nations, and particularly of the Civil Law.

As to the fundamental constitution of our Government, I did formerly remark, that our Historians tell us, that the *Scots* did swear alledgeance to *FERGUS*, who was the first of our Kings, and to his Heirs. And that they should never obey any other, but his Royal Race. Which Oath does in Law, and reason, bind them to obey the lineal Successor, according to the proximity of Blood. For an indefinite obligation to obey the blood Royal, must be interpreted according to the proximity in Blood, except the swearers had reserv'd to themselves a power to choose any of the Royal Familie, whom they pleas'd, which is so true, that in Law, an obligation granted to any man, does in the construction of Law accresce to his Heirs, though they be not exprest. *Qui sibi providet, & heredibus providet.* And *Boethius* tells us that after King *FERGUS*'s death, the *Scots* finding their new Kingdom infested with warrs, under the powerful influence of *Picts*,
Ro-

Romans, and *Britans*, they refus'd notwithstanding to preferre the next of the Royal Race, who was of perfect age, and a man of great merit, to the Son of King FERGUS, though an infant; which certainly in reason they would have done, if they had not been ty'd to the lineal Successor. But lest the Kingdom should be prejudg'd during the minority, they enacted, that for the future, the next of the Blood Royal should alwayes in the minority of our Kings administrat as Kings, till the true Heir were of perfect age. But this does not prove, as *Buchanman* pretends, that the people had power to advance to the Throne, any of the Royal Race: whom they judg'd most fit, for common sense may tell us, that was not to choose a King, but a Vice-Roy, or a Regent. For, though to give him the more authority, and so to enable him the more to curb factions, and oppose enemies, he was called King, yet he was but *Rex fidei Commissarius*, being oblig'd to restore it to the true Heir at his majority: and so Governed only in his Vice, and consequently was only his Vice-roy.

But because the Uncles, and next Heirs being once admitted to this *fidei Commissarie* title, were unwilling to restore the Crown to their Nephews, and sometimes murder'd

them: and oftentimes rais'd factions against them. Therefore the People abhorring these impieties, and weary of the distractions, and divisions, which they occasion'd, beg'd from King KENNETH the second, that these following Laws might be made.

1. That upon the Kings death the next Heir of whatsoever age should succeed.

2. The Grand-childe either by Son or Daughter should be preferr'd.

3. That till the King arriv'd at 14 years of age, some Wise-man should be choos'd to Govern, after which, the King should enter to the free administration, and according to this constitution, some fit Person has still been choos'd Regent in the Kings minority, without respect to the proximity of Blood, and our Kings have been oftentimes Crown'd in the Cradle.

In conformity also to these principles, all the acknowledgements made to our Kings, run still in favours of the King, and his Heirs. As in the first Act Parl. 18. JAMES VI. and the II, III, IV. Acts Parl. I. CHARLES II. And by our Oath of Alledgeance, we are bound to bear faithful and true alledgeance to his *Majesty*, his Heirs and Lawful Successors; which word **LAWFUL**, is insert, to cutt off the pretexts of such as should not suc-

succeed by Law, and the insolent arbitrariness of such, as being but subjects themselves, think they may choose their King. *viz.* Act 1. Parl. 21. JAMES 6.

That this right of Succession according to the proximity of blood, is founded on the Law of God, is clear by *Num.* „Chap. 27. v. 9. and 10. If a man hath no „Son or Daughter, his inheritance shall „descend upon his Brother, by *Num.* 36. Where, God himself decides in favours of the Daughters of *Zelophehad*, telling us, it was a just thing, they should have the inheritance of their father. And ordaines, that if there were no Daughters, the estate should go to the Brothers. *Saint Paul* likeways concludes *Rom.* 8. If Sons, then Heirs, looking upon that, as a necessary consequence; which if it do not necessarily hold, or can be any way disappointed, all his divine reasoning in that Chapter falls to nothing. And thus *Abaziah* 2 *Chron.* 22. v. 1. was made King (though the youngest) in his Fathers stead; because sayes the text, „the *Arabians* had slain all the eldest: which clearly shews that by the Law of God, he could not have succeeded, if the eldest had been alive. We hear likeways in Scripture, „God oft telling, *By me Kings reigne.*

And when he gives a Kingdom to any as to *Abraham*, *David*, &c. He gives it to them and their posterity.

That this right of Succession flowes from the Law of nature, is clear; because, that is accounted to flow from the Law of nature, which every man finds grafted in his own heart, and which is obey'd without any other Law, and for which men neither seek nor can give another distinct reason; all which hold in this case: for who doubts when he heares of ane hereditary Monarchy, but that, the next in blood must Succeed; and for which we need no positive Law, nor does any man enquire for a further reason, being satisfied therein by the principles of his own heart. And from this ground it is, that though a remoter Kinsman did possess as Heir, he could by no length of time prescribe a valide right; since no man, as Lawyers conclude, can prescribe a right against the Law of nature: and that this principle is founded thereupon is confest *l: cum ratio naturalis ff. de bonis damnat: cum „ratio naturalis, quasi lex quædam tacita, „liberis parentum hæreditatem adjecerit, „veluti ad debitam successionem eos vocando: propter quod suorum hæredum nomen „eis indultum est; adeo ut ne a parentibus „quidem*

„quidem, ab eâ successione amoveri possint.
 „Et §. emancipati Institut: de hæred: quæ
 „ab intest. Prætor naturalem æquitatem
 „sequutus, iis etiã bonorum possessionem
 „contra 12 tabularum leges, & contra jus
 „civile permittit. Which text shewes like-
 „wayes, that this right of nature was stron-
 „ger than the Laws of the 12 Tables, though
 these were the most ancient and chief Sta-
 tutes of Rome. Which principle is very clear
 likewayes from the Parable, *Math. 21.*
 Where the Husband-men who can be pre-
 sum'd to understand nothing but the Law of
 nature, are brought in saying, this is the
 „Heir, let us kill him and seaze on his inheri-
 „tance. Nor does this hold only in the Suc-
 cession of Children or the direct line, but in
 the collateral Succession of Brothers and
 „others *L. hac parte ff. unde cognati. Hac*
 „parte proconsul *Naturali æquitate motus,*
 „omnibus cognatis permittit bonorum posses-
 „sionem quos sanguinis ratio Vocat ad hære-
 „ditatem. Vid. *l. 1. ff. de grad. & l. 1. §. hoc*
 „autem *ff. de bonor. possess.* And these who are
 now Brothers to the present King, have been
 Sones to the former: and therefore what-
 ever has been said for Sones, is also verified
 in Brothers. As for instance, though his
 Royal Highness be only Brother to King

CHARLES the II., yet he is Son to King CHARLES I. and therefore, as Saint Paul sayes, if a Son, then ane Heir, except he be secluded by the existence and Succession of ane elder Brother.

That this gradual Succession is founded on the Law of nations, is as clear by the Laws of the 12 Tables, and the Prætorian Law of *Rome*. And if we consider the Monarchy either old or new, we will find, that wherever the Monarchy was not elective, the degrees of succession were there exactly observed. And *Bodinus* de Republ. lib. 6 Cap. 5. „asserts, that, *Ordo non tantum nature & divine sed etiam omnium ubique gentium hoc postulat*. From all which, Pope Innocent in c. grand. de supplend. neglig. prælati concludes, *In regnis hæreditariis ca. veri non potest ne filius aut frater succedat*. And since it is expressly determined, that the right of blood can be taken away by no positive Law or Statute *L. Jura Sanguinis ff. de Reg. jur. & L. 4. ff. de suis legitim.* and that the power of making a Testament, can be taken away by no Law *L. ita legatum ff. de conditionibus*. I cannot see how the right of Succession can be taken away by a Statute: for that is the same with the right of Blood, and

and is more strongly founded upon the Law of nature, than the power of making Testaments.

Since then this right is founded upon the Law of God, of nature and of nations, it does clearly follow, that no Parliament can alter the same by their municipal Statutes, as our Act of Parliament has justly observed.

For clearing whereof, it is fit to consider, that in all powers and jurisdictions which are subordinat to one another, the Inferiour should obey, but not alter the power to which it is subordinat; and what it does contrary thereto, is null and void. And thus, if the judges of *England* should publish edicts contrare to Acts of Parliament, or if a Justice of Peace should ranverse a decree of the judges of *West-minster*, these their endeavours would be void and ineffectual. But so it is, that by the same principle, but in ane infinitely more transcendent way, all Kings and Parliaments are subordinat to the Laws of God, the Laws of Nature, and the Laws of Nations: And therefore no Act of Parliament can be binding, to overturn what these have established.

This, as to the Law of God, is clear, not only from the general dictats of Religion,

gion, but 28 Hen. 8. cap. 7. the Parliament
 „ uses these words, For no man can dispence
 „ with Gods Laws; which we also affirme and
 „ think. And as to the Laws of nature, they
 must be acknowledged to be immutable, from
 the principles of reason. And the Law it
 „ self confesses that *naturalia quædam jura*
 „ *quæ apud omnes gentes per æquè observan-*
 „ *tur, divina quadam providentia constitu-*
 „ *ta semper firma, atque immutabilia per-*
 „ *manent.* §. *sed naturalia Institut. de Jur.*
Natural. & §. singulorum de rer. divis:
 And when the Law declares, that a Supream
 Prince is free from the obligation of Laws,
Solutus legibus, which is the highest power
 that a Parliament can pretend to, or arrive
 at; Yet Lawyers still acknowledge that
 this does not exeem these Supream powers
 from being lyable to the Laws of God, na-
 ture and nations, *Accurs: in l. Princeps ff.*
de Leg. Clementina pastoralis de re judi-
catâ Bart. in l. ut vim de justitiâ & jure
Voet. de Statutis Sect. 5. Cap. 1. nor can
 the Law of nations be overturned by private
 Statutes, or any Supream power. And thus
 all Statuts to the prejudice of Ambassadors,
 who are secured by the Law of nations,
 are confess'd by all to be null, and the highest
 power whatsoever cannot take off the ne-
 cessity

cessity of denouncing warr before a warr can be Lawful. And Lawyers observe verie well, that these who would oppose the common dictats of mankind, should be look't upon as enemies to all mankind.

My second argument shall be, that the King & Parliament can have no more power in Parliament than any absolute Monarch has in his own Kingdom: for, they are when joyn'd, but in place of the Supream power, sitting in judgement; and therefore they cannot in Law do what any other Supream and absolute Monarch cannot do. For all the power of Parliaments consists only in their consent, but we must not think, that our Parliaments have ane unlimited power *de jure*, so, as that they may forfeit or kill without a cause or decerne against the Subjects without citing or hearing them; or, that they can alienat any part of the Kingdom; or Subject the wholl Kingdom to France or any other Forraigne Prince: all which deeds would be null in themselves, and would not hinder the partie injur'd from a due redress. For if our Parliaments had such power, we would be the greatest slaves, and live under the most arbitrary Government imaginable. But so it is, that no Monarch whosoever can take from any man what is due

due to him, by the Law of God, nature, and nations. For being himself inferiour to these he cannot overturne their statuts. Thus a Prince cannot even *ex plenitudine potestatis legitimat* a Bastard in prejudice of former children though they have only but a hope of Succession l. 4. & *sequen. de natal. restituend.* and for the same reason, it is declared in the same Law, that he cannot restore a free'd man (*restituere libertum natalibus*) in prejudice of his Patron, who was to succeed, though that succession was but by a municipal Law. For clearing which question, It is fit to know that the solid lawyers who treat *jus publicum*, as ARNISEUS and others, do distinguish betwixt such Kingdoms, as were at first conferr'd by the People, and wherein the Kings succeed by contract, and in these, the Laws made by King and People can exclude, or bind the Successor. And yet even here, they confess, that this proceeds not, because the Predecessor can bind the Successor, but because the People renew the paction with the succeeding King. But where the Successor is to succeed *ex jure regni*, in hereditary Monarchies, there they assert positively that the Predecessor cannot prejudge the Successors right of Succession. Which they prove by two ar-

arguments. First, that the Predecessor has no more power, nor right, than the Successor: for the same right, that the present King has to the possession, the next in Blood has to the Succession. And all our Laws run in favours of the King, and his Heirs, and no man can tie his equal, or give him the Law, *par in parem non habet dominium*. The second is, that it were unjust and unequitable that the Predecessor should robbe his Successor *nulla ergo* (sayes *Arniseus* Cap. 7. Num. 5.) *clausula Successori jus auferri potest; modo succedat ille ex jure regni*. And *Hottoman: lib. 2. de Regno Gallie* asserts, that in France which is a very absolute Monarchy, *Ea qua jure Regio primogenito competunt, ne Testamentis, to quidem patris adimi possunt*. And thus when the King of France design'd to break the Salique Law of Succession, as in the Reigne of CHARLES the V. It was found impracticable by the three Estates, and when *Pyrhus* was to preferre his youngest Son to the Crown, the *Epirots* following the Law of Nations, and their own, refus'd him, *Paus. lib. 1*. In the year 1649. Also *Amurat* the grand *Seignior*, having left the Turkish Empire to *Han* the *Tartarian*, passing by his Brother *Ibrahim*, the wholl Officers of that State, did unanimously Cancel that

Te-

Testament, and restore *Ibrahim*; the true Heir tho a silly foole.

Which shewes the opinion not only of Lawyers but of whole nations and Parliaments; „ Tho *vander Graaff*, an *Hollander* confesses, that it is not Lawfull to choose any of „ his Sons to succeed him, in which, the general quiet of the Kingdom is much concerned. „ And therefore, tho the next Heir were wiser, „ braver, and more generally beloved; Yet the „ more immediat must be received, as choos'd „ by God, whither good or bad, and as honored with his Character. And if Kings could have inverted their Succession, and choos'd their own Successor Saint *Lewis* had preferred his own third Son to *Lewis* his eldest, and *Alfonfus* King of *Leon* in *Spaine*, had preferred his Daughters to *Ferdinand* his eldest Son. And *Edward* the VI. of *England* had preferred, and did actually preferre the Lady *lean Gray* to his Sisters *Mary*, and *Elizabeth*. And if Successions especially of such great importance, had not been fixed by immutable Laws of God, and nature, the various and unconstant inclinations of the present Governours, especially when shaken by the importunity of Step-mothers and Mothers, or clouded by the jealousy of flatterers, or favourits, had made the Nations whom they Go-

Governed, very unhappy: and therefore, God did very justly, and wisely settle this Succession, that both King and People might know, that it is by him that Kings Reigne, and Kingdoms are secur'd in Peace against faction. and it were strange, that this should not hold in Kings, since even amongst subjects the Honour and Nobility that is bestow'd upon a Man and his Heirs, does so necessarily descend upon those Heirs, that the Father, or Predecessor cannot seclude the next Successor, or derogat from his right, either by renouncing, resigning, following base or mean Trades, or any other: For say those Lawyers, since he derives this right from his old Progenitors, and owes it not to his Father, his Fathers deed should not prejudice him therein. *Fab. Cod. 9. Tit. 28. Def. 1. Warner; Consil. 20. Num. 7.* And as yet the Estates of Parliament in both Nations have no legislative power, otherwayes than by assenting to what the King does; so that if the King cannot himself make a Successor, neither can they by consenting: and all that their consent could imply wold only be that, they and their Successors should not oppose his nomination, because of their consent. But that can never amount to a power of transferring the Monarchy from one branch

to another, which would require, that the Transferrers, or bestowers had the Supream power Originally in themselves, *nemo enim plus juris in alium transferre potest quam ipse in se habet.* And if the States of Parliament had this power Originally in themselves to bestow, why might they not reserve it to themselves? And so perpetuate the Government in their own hands: And this mov'd judge *Jenkins* in his treatise concerning the liberty and freedom of the subject, pag. 25. To say, that *no King can be Named, or in any time made in this Kingdom, by the People. A Parliament never made a King, for there were Kings before there were Parliaments, and Parliaments are summoned by the Kings writtes.*

Fourthly, A King cannot in Law alienat his Crown, as is undenyable in the opinion of all Lawyers, and if he do, that deed is voyd and null, nor could he in Law consent to an Act of Parliament declaring that he should be the last King. And if such consents and Acts had been sufficient to bind Successors, many silly Kings in several parts of *Europe* had long since been prevail'd upon, to alter their Monarchy from *Hereditarie* to *Elective*; or to turn it in a Common-wealth; and therefore by the same reason, they cannot consent,

sent to exclude the true Successor ; For if they may exclude one they may exclude all.

5. In all Societies and Governments, but especially where there is any association of powers, as in our Parliaments, there are certain fundamentals, which like the Noble parts in the Body are absolutely necessary for its preservation; for without these, there would be no Ballance, or certainty. And thus with us, if the King and each of the Estates of Parliament had not distinct and known limits (sett by the gracious concessions of our Monarchs) each of them would be ready to invade one anothers Priviledges. And thus I conceive that if the Parliament should consent to alienate the half of the Kingdom, or to subject the whole to a Stranger, as in King *Johns* case in *England*, and the *Baliols* in *Scotland*, it has been found by the respective Parliaments of both Kingdoms, that, that Statute would not oblige the Successor. Or if the House of commons in *England*, or the Burrowes of *Scotland* should consent to any Act excluding their Estate and representatives from the Parliament, doubtlesse that Statute excluding them would not prejudice their Successors; because that Act was contrare to one of the fundamental Laws of the Nation. And

the late Acts of Parliaments excluding Bishops, were reprobated by the ensuing Parliaments, as such; and therefore by the same rule, any Statute made excluding the legal Successor, would be null and voyd, as contrare to one of the great Fundamental Rights of the Nation. And what can be call'd more a Fundamental Right than the Succession of our Monarchy? Since our Monarchy in this *Isle*, has ever been acknowledg'd to be hereditary. And that this acknowledgment is the great *Basis* whereupon most of all the positions of our Law run, and are established: such as, that the King never dyes, since the very moment in which the last King dyes, the next Successor in Blood is Legally King, and that without any expresse recognizance from the People, and all that oppose him are Rebels, His Commissions are valide, He may call Parliaments, dispose the Lands pertaining to the Crown, all men are lyable to do him homage; and hold their Rights of him and his Heirs. And generally this principle runs through all the veins of our Law. It is that, which gives life and Authority to our Statutes, but receives none from them; which are the undeniable marks and Characters of a Fundamental Right in all Nations. But that this right of lineal Succession

is

is one of the Fundamental, and unalterable Laws of the Kingdom of *Scotland*, is clear, by the Commission granted by the Parliament for the union in *Anno 1604*. In which these words are, his Majesty vouchsafeing, „ to assure them of his sincere disposition and „ clear meaning, no way by the foresaid Union „ to prejudice or hurt the Fundamental Laws, „ ancient Priviledges, Offices and Liberties of „ this Kingdom; whereby not only the Princely Authority of his most Royal descent „ hath been these many ages maintain'd, but „ also his Peoples securities of their Lands and „ Livings, Rights, Liberties, Offices and „ dignities preserv'd: Whilks if they should be „ innovated, such confusion should ensue; as „ it could no more be a free Monarchy.

6. There would many great inconveniencies arise, both to King and People, by the Parliaments having this power: For weak Kings might by their own simplicity, and Gentle Kings by the rebellion of their Subjects be induced to consent to such Acts, in which their Subjects would be tempted to cheat in the one case, and rebell in the other. Many Kings likewise might be wrought upon, by the importunity of their Wives, or Concubins, or by the misrepresentations of Favourits, to disinherit the true Successor; and he likewise to prevent this arbitrariness, would be oblid-

g'd to enter in a faction for his own support, from his very infancy. This would likewise animate all of the Blood Royal, to compete for the Throne, and in order thereto, they would be easily induc'd to make factions in the Parliament, and to hate one another; whereas the true Successor would be ingadg'd to hate them all, and to endeavour the ruine of such as he thought more popular than himself. Nor would the people be in better case, since they behov'd to expect upon all these accompts, constant civil warres and animosities, and by being unsure whom to follow, might be in great hazard by following him who had no Right. And their rights bearing to hold of the King and his Heirs, it would be dubious to the vassals, who should be their superiour, as well, as who should be their King. It is also in reason to be expected, that *Scotland* will ever owne the legal descent: and thus we should under different Kings of the same Race, be involv'd in new and constant civil wars; *France* shall have a constant door open'd, by allyances with *Scotland*, to disquiet the peace of the whole *Isle*; and *England* shab loose all the endeavours it used to unite this *Isle* within it self. Another great absurdity and inconveniency which would follow upon the exclusion of the lineal Successor

cessor would be, that if he had a Son, that Son behoov'd certainly to succeed; and therefore after the next Lawful Heir were brought from abroad to Reigne, he' behov'd to return upon the Birth of this Son; and if he dyed he would be again call'd home, and would be sent back by the Birth of another Son: which would occasion such affronts, uncertainties, divisions, factions, temptations, that I am sure, no good nor wise man could admit of such a project.

I find also, that as the debarring the Righteous Heir, is in reason, the fruitful seed of all civil warr and misery, (for who can Imagine that the Righteous Heir will depart from his Right, or that wise men will endanger their lives and fortunes in opposition to it?) so experience has demonstrated, how dangerous, and bloody this injustice has prov'd. Let us remember amongst many Domestick examples, the miseries that ensu'd upon the exclusion of *Mordredus* the Son of *Lothus*; the destruction of the *Picts* for having secluded *Alpinus* the Righteous Heir; the warrs during the reigne of *William* the Conquerour; these betwixt King *Stevin* and *Henry* the II, betwixt the Houses of *Lancaster* and *Tork*; betwixt the *Bruce* and the *Balliol*; the mur-

ther of *Arthur Duke of Britanny*, true Heir of the Crown of *England*, with many other forreigne Histories, which tell us of the dreadfull michiefs arising from *Pelops* preferring his youngest Son to the Kingdom of *Micene*; from *Edipus* commanding that *Polinices* his youngest Son should reigne alternatly with the eldest; from *Parisatis* the Queen of *Persia's* preferring her youngest Son *Cyrus*, to her eldest *Artaxerxes*, from *Aristodemus* admitting his two Sons *Proclus*, and *Euristhenes* to an Equall share in the *Lacedemonian* Throne. The like observations are to be made in the Succession of *Ptolemeus Lagus* and *Ptolemeus Phisico*, In the Sons of *Severus*, in the Succession of *Sinesandus* who kill'd his Brother *Suintilla* Righteous Heir of *Spaine*, And that of *Francis* and *Fortia Duke of Millan* with thousands of others: In all which, either the usurpers or the Kingdom that obey'd them, perish'd utterly. To prevent which differences and mischiefs, the *Hungarians* would not admitte *Almus* the younger Brother, in exclusion of the elder *Colomanus*, though a silly deform'd creature, albeit *Almus* was preferr'd by *Ladislaus* (the Kings elder Brother) to both. Nor would *France* acquiesce in *St. Lewis* his preferring

ring CHARLES his 3 Son, to Lewis the eldest. And the *English* refus'd to obey Lady Iean Gray, in prejudice of Queen Marie, though a Papist and persecuter. *Tali & constanti veneratione nos Angli legitimos Reges prosequimur &c.* sayes an *English* Historian.

7. If Parliaments had such powers as this, then our Monarchy would not be hereditary, but elective; the very essence of an hereditary Monarchy consisting in the right of Succession, according to the contingency of blood. Whereas if the Parliament can preferre the next, save one, they may preferre the last of all the line: for the next save one, is no more next than the last is next. And the same reason by which they can choose a Successor (which can only be that they have a power above him) should likewises in my opinion justify their deposing of Kings. And since the Successor has as good Right to succeed, as the present King has to Govern (for that Right of blood which makes him first, makes the other next, and all these Statuts which acknowledge the present Kings Prerogatives, acknowledge that they belong to him and his Heirs.) It followes clearly, that if the Parliament can preclude the one, they

may exclude the other. And we saw even in the last age, that such reasons as are now urged to incapacitate the children of our last Monarch, from the hope of Succession. *viz.* Popery, and arbitrary Government, did embolden men to Dethrone, and Murder the Father himself who was actual King.

8. That such Acts of Parliament, altering the Succession are ineffectual, and null. Is clear from this, that though such an Act of Parliament were made, it could not debarre the true Successor: because by the Laws of all Nations, and particularly of these Kingdoms, the Right of Succession purges all defects, and removes all impediments, which can prejudice him who is to Succeed. And as *Craig* one of our learn'd lawyers, „has very well express'd it, *Tanta est Regii sanguinis prerogativa, & dignitas, ut vitium non admittat, nec se contaminari patiatur.* And thus though he who were to succeed, had committed murder, or were declar'd a traitour formerly to the Crown for open Rebellion against the King, and Kingdom; yet he needed not be restor'd by Act of Parliament upon his coming to the Crown: But his very Right of blood would purge all these imperfections. Of which there are two reasons given by Lawyers,
one

one is, that no man can be a Rebel against himself, nor can the King have a Superior. And consequently, there can be none whom he can offend. And it were absurd that he who can restore all other men, should need to be restored himself. The second reason is, because the punishment of crimes, such as confiscations, &c. Are to be inflicted by the Kings Authority, or to fall to the Kings Thesaurary; and it were most absurd, that a man should exact from himself a punishment. Likeas, upon this account it is, that though in the Canon Law, Bastards cannot be promov'd to sacred orders without dispensation, nor can *alibi nati*, that is to say, people born out of *England* be admitted to succeed in *England*, by express Act of Parliament there; Yet *Agapetus*, *Theodorus*, *Gelasius* and many others, have been admitted to be Popes without any formal dispensation, their election clearing that imperfection. And the Statute of *alibi nati*, has been oft found not to extend to the Royal line.

That the Succession to the Crown purges all defects, is clear, by many instances, both at home and abroad. The instances at home are, in *England* Henry the VI. Being disabled and attainted of high treason by Act
of

of Parliament, it was found by the Judges, notwithstanding that from the moment he assum'd the Crown, he had Right to succeed without being restored. And the like was resolved by the Judges in the case of *Henry the VII.* As *Bacon* observes in his History of *Henry the VII.* fol. 13. And in the case of Queen *Elizabeth*, who was declar'd Bastard by Act of Parliament, as is clear by *Cambden* anno 2. *Elizabeth*. And though in *Scotland* there be no express instances of this, because though some Rebellious Ring-leaders in *Scotland*, have often in a privat capacity been very injurious to their King; Yet their Parliaments have been ever very tender of attainting the blood Royal, or presumptive Heirs. But *Alexander Duke of Albanie*, and his Succession being declared traitours, by his Brother King *James the IV.* his Son *John* was notwithstanding called home from *France* upon his Uncles death, and declar'd Tutor and Governour, without any remission, or being restor'd: that employment being found to be due to him by the right of blood: therefore he had been much more declared the true Successor of the Crown if his Cousin King *James the V.* had died.

These being sufficient to establish our design,

design. I shall mention only some forraigne stories.

CHARLES the VII. of *France* who though banish'd by Sentence of the Parliament of *Paris*, did thereafter succeed to the Crown. And though *Lewis* the XII. was forfeited for taking up armes against CHARLES the VIII. Yet he succeeded to him without restitution. And *Lewis* the II. his Son being declared a Rebel, whom his Father desiring to disinherite, and to substitute in his place *Charles* Duke of *Normandie*, that Son had succeeded if he had not been hindered by the Nobility, who plainly told him it was impossible to exclude his Sone from the Succession.

My next task shall be to satisfy the arguments brought for mantaining this opinion, whereof the first is.

That God himself has authorised the inverting the Right of Succession, by the examples of *Esau*, *Salomon*, and others.

To which I answer, that these instances which are warranted by expresse commands from God, are no more to be drawn into example, than the robbing of the *Aegyptians* ear-rings. And it's needing an expresse command, and the expresse of that command, does evince, that otherwayes *Iacob*,
not

nor *Salomon* could not have succeeded against the priviledge of birth-Right and possession.

The next objection, is that it is naturally imply'd in all *Monarchies*, that the people shall obey whilst the Prince Governs justly, As in the paction betwixt *David*, and the people 2*Sam.* 5. Which is most suitable to the principles of justice, and Government: Since relations cannot stand by one side; so that when the King leaves off to be King, and becomes a Tyrant, the people may consult their own security in laying him aside, as Tutors may be remov'd when they are suspect. And that this is most just when Kings are Idolaters since God is rather to be obey'd then men.

To all which it is answered, that God who loves order, and knows the extravagant levity, and insolence of men, especially when baited by hope of prey, or promotion, did wisely think fit to ordain under the paine of eternal damnation, that all men should be subject to Superiour powers for conscience sake. 1 *Pet.* 2. 13. and that whoever resists the power, resists God, *Rom.* 13. 2. reserving the punishment of Kings to himself, as being only their Superiour. And thus *David*, *Asa*, and others, committed
crime

crimes, but were not depos'd, nor debarr'd by the people. Nor were even the Idolatrous Kings such as *Achab*, *Manasse*, &c. judged by their subjects, nor did the Prophets exhort the people to rise against them, though they were opposing Gods expresse, and immediat will, And overturning the uncontraverted fundamentals of Religion. Nor did the Fathers of the primitive Church, excite the Christians to oppose the Heathen, and Idolatrous Princes, under which they lived: and *Paul* commands them to pray for these Heathen Emperours. Nor was the Emperour *Basilicus* depos'd for abrogating the Council of *Chalcedon*, as is pretended by some Republicans, but was turn'd out by the just Successor *Zeno*, whom he had formerly dethron'd. Nor were *Zeno* or *Anastasius* degraded for their errors in Religion, or their vices by the ancient Christians: but were oppress'd by private faction. And sure they must think God unable to redress himself, who without warrand, and against his expresse warrand, will usurpe so high a power. And we in this rebellious principle, owne the greatest extravagancy with which We can charge the Pope and Jesuits, and disowne not only our own Confession of faith „ which Article 1. *Chap. 22.* acknowledges, „ that

„that infidelity, or difference in Religion
 „doth not make void the Magistrats just, or
 „legal authority, nor free the People from
 „their due obedience to him; but contradict
 the best Protestant divines, as *Muscus*,
Melancthon and others *vid. libell. de vi-*
tand. superstit. Anno 1550. & *Consil. Biden.*
Dec. 1. Consil. 10. & Decad. 10. Consil. 3.
 nor can the subterfuge used by *Buchanan*,
 and others satisfie, whereby they contend
 that the former Texts of Scripture prove on-
 ly that the Office, but not the Persones of
 Kings are Sacred; so that Parliaments or
 People may lay aside the Persons, though
 not the Office, seing the Sacred Text secures
 oftner the Person, than the Office as I have
 formerly more fully prov'd. And if this
 principle prevail as to the differences in the
 Theory of Religion, it would in the next step
 be urg'd as to the practice of Religion; and
 we would change our Kings, because we
 thought them not pious, as well as Prote-
 stants. And did not our Sectarians refine so
 far, as to think dominion founded on grace?
 and this opinion seems to my self more solide
 than the other, for certainly an impious
 Protestant, is a worse Governour, and less
 Gods Vicegerent, and image, than a de-
 vout Papist. And amongst Protestants, every
 Secte

Secte will reject a King, because he is not of their opinion. And thus our Covenanters; by the Act of the West-kirk Anno 1650. declar'd, they would disown our present Monarch, if he did not own the Covenant. And though a King were Protestant, yet still this pretext that he design'd to introduce Popery, would raise his People against him, if differences in Religion could Lawfully Arme Subjects against their King, or did empower them to debar his Successor. And when this cheat prevail'd against devout King *Charles* the I, the Martyr of that Orthodox Faith to which he was said to be enemy, what a madness is it to allow this fatall error, which was able to ruine us in the last age, and went so near to destroy us in this? This is indeed, to allow that arbitrariness against our Kings, which we would not allow in them to us.

The second Objection is, that in *England* the Parliament has frequently devolv'd the Crown and Government upon such as were not otherways to have succeeded, as in the instances of *Edward* the II. and *Richard* the III, the first of whom was most unjustly depos'd, for making use of *Gavestoun*, and the *Spencers*; which shewes how extravagant the People are in their humours, rather than how just their power is: for besides, that

do not read, that these Counsellors were unsufferable, there is no good Christian that can say, that a King can be depos'd for using ill Counsellors. And as to *Richard* the III. his case is so fully examined, and all the Articles brought both against him, and *Edward* the II. so fully answered by the learn'd *Arniseus* a Protestant Lawyer, (and who had no other interest in that debate than a love to Truth and Law) in that treatise, *Quod nullâ ex causâ subditis fas sit contra legitimum principem arma sumere*, that we Protestants should be asham'd to bring again to the field such instances, upon which *Arniseus*, in answer to the 14. Article against *Richard* the II, viz. that he refus'd to allow the Lawes made in Parliament, does very well remark, that this was in effect to consent to their being King, and to transferre upon them the Royal power, and this will be the event of all such undertakings.

The instances of *Henry* the IV. and *Henry* the VII., are of no more weight than the other two, since these were likeways only Kings *de facto*, till King *Henry* the VII. by his marriage with the Lady *Elizabeth*, eldest Daughter to King *Edward* the IV., did by her transmit a just title to his Successor: & therefore it was not strange, that either of these

these should allow the Parliament to interpose, when they behov'd to owe to them the possession of the Throne. But yet *Henry* the VII. himself (as the Lord *Bacon* relates in his Historie) shunn'd to have the Parliament declare his title to be just, being content with these ambiguous words, *viz. that the inheritance of the Crown should rest, remain and abide in the King, &c.* And upon this accompt it was, that the same King caus'd make a Law, that such as should serve the King for the time, being in his warrs, could not be attainted or impeach'd in their persons or Estates.

As to *Henry* the VIII. his procuring an Act, whereby the Parliament declares that in case he had no issue by the Lady *Jean Seymour*, he might dispose of the Crown to whatsoever person he should in his own discretion think fit.

It is answered, that by a former Statute in the 25 year of his Reigne, he by Act of Parliament settles the Crown upon the Heirs male of his own body, and for lack of such issue, to Lady *Elizabeth*, and for lack of such issue also, to the next Heirs of the King, who should for ever succeed according to the right of Succession of the Crown of *England*; which shewes that the Succession to the

Crown of *England* is establish't by the Law of Nature , and the Fundamental Laws of *England*, upon the Heirs of Blood, according to the proximity of degrees ; so that though that King did afterwards prevaile with the Parliament to declare this *Elizabeth* a Bastard, as he did also his Daughter *Mary*, by another Act, and resolve to settle the Crown, upon *Henry Fitz Roy*, Duke of *Richmond*, yet these Acts teach us how dangerous it is to leave Parliaments to the impression of Kings in the case of naming a Successor, as it is to expose Kings to the arbitrariness of Parliaments. But such care had God of his own Laws, that *Mary* succeeded notwithstanding She was Papist, and *Elizabeth* succeeded her, though she was declar'd Bastard; the Rights of Blood prevailing over the formalities of divorce, and the dispensations of Popes : as the strength of Nature does often prevaile over poisons. And God remov'd the Duke of *Richmond* by death, to prevent the unjust competition, and so little notice was taken of this ; and the subsequent Act *Anno 1535*, that the Heirs of Blood succeeded without repealing of that Act, as an Act in it self invalide from the beginning: for only such Acts are past by, without being repeal'd. And *Blackwood pag. 45.* observes very well, that

that so conscious were the Makers of these Acts, of the illegality thereof, and of their being contrarie to the immutable Laws of God, Nature and Nations, that none durst produce that Kings Testament wherein he did nominat a Successor, conform to the power granted by these Acts, that how soon they were freed by his death from the violent oppressions that had forced them to alter a Successor three several times, and at last to swear implicitly to whomever he should nominat, (a preparative which this age would not well bear though they cite it) they proclaimed first Queen *Mary* their Queen though a Papist, and thereafter Queen *Elizabeth*; whom themselves had formerly declared a Bastard. And as in all these Acts there is nothing declaring the Parliaments to have power to name a Successor, but only giving a power to the King, for preventing mischiefs, that might arise upon the dubiousness of the Succession, to nominat a Successor; two of the legal Successors having been declar'd Bastards upon some niceties, not of nature, but of the Popes Bulls for divorcing their Mothers: so, this instance can only prove, that the King may nominat a Successor, and that the Parliament may consent, not to quarrell it, (which is all that they do) but does not at all prove;

that where the Right of Nature is clear, the Parliament may invert the same. And strangers who considered more the dictats of Law than of Passion, did in that age conclude, that no Statute could be valide when made contrare to the fundamental Law of the Kingdom, *Arniseus Cap. 7. Num. 11. Henricus VIII. Anglia Rex Eduardum filium primò, deinde Mariam, denique Elizabetham suos hæredes fecerat, verum non aliter ea omnia valent quàm si cum jure Regni conveniant*, Vid. *Curt. Tract. Feud. Par. 4. Num. 129.*

There seems greater difficulty to arise from the 13 *Elizabeth c. 2.* by which it is enacted, that if any persone shall affirme, that the Parliament of *England* has not full power to bind and Governe the Crown in point of Succession and descent, that such a persone, during the Queens life, shall be guilty of high treason.

But to this Act it is answered, that this Act does not debarre the next legal and natural Successor. And these words, *That the Parliament has power to bind and Govern the Succession*, must be, as all other general expressions in Statutes, interpreted and restricted by other uncontraverted Laws; and so the sense must be, that the Parliament are Judge where

where there are differences betwixt Competitors in nice and contravertable points which cannot be otherwise decided : and both this and the former Acts made in *Henry* the VI. time, are not general Laws but temporary Acts and personal Priviledges; and so cannot overturn the known current of Law. *Quod verò contra rationem juris receptum est, non est producendum ad consequentias.* And in all these instances it is remarkable, that the restriction was made upon the desire of the *Souveraigne*, and not of the Subject. And if we look upon this Act as made to secure against *Mary* Queen of *Scotland*, and to let her know, that it was to no purpose for her to designe any thing against the Right, or Person of Queen *Elizabeth*, as being declar'd a Bastard, by Act of Parliament in *England*; since her other right as next undoubted Heir by Blood to the Crown, might be altered, or Govern'd : we must acknowledge it to be only one of these Statutes, which the Law sayes, are made *ad terrorem* & *ex terrore* only. Nor was there ever use made of it by Queen *Elizabeth*, nor her Parliaments; so fully were they convinc'd, that this pretended power was so unjust, as that it could not be justified by an Act of Parliament, being contrair to the

Laws of God, of Nature, of Nations, and of the Fundamental Laws of both Kingdoms. But this Law being made to exclude Queen *Mary*, and the *Scotish* line, as is clear by that clause, wherein it is declared that every Person or Persones of what degree or Nation soever they be, shall during the Queens life declare or publish, that they have Right to the Crown of *England* during the Queens life, shall be disinabled to enjoy the Crown in Succession, inheritance, or otherwayes, after the Queens death; It therefore followes, that it was never valide: For if it had, King *James* might have thereby been excluded by that person who should have succeeded next to the *Scotish* race. For it's undeniable, that Queen *Marie* did, during Queen *Elizabeths* life, pretend Right to the Crown, upon the account that Queen *Elizabeth* was declared Bastard. And therefore the calling in of King *James* after this Act, and the acknowledging his title, does clearly evince, that the Parliament of *England* knew, that they had no power to make any such Act. The words of which acknowledgement of King *James's* Right, I have thought fit to set down, as it is in the statute it self, *I. Ja. Cap. 1.* That the Crown of *England* did descend

„descend upon King *James* by inherent
 „Birthright, as being lineally, justly, and
 „Lawfully next, and sole Heir of the Blood
 „Royal. And to this recognition they do
 „submit themselves, and posterities for
 „ever, untill the last drop of their Blood be
 „spilt. And further doth beseech his Majesty
 „to accept of the same recognition, as the
 „first Fruits of their Loyalty, and Faith to
 „his Majesty, and to his Royal progeny, and
 posterity for ever.

It may be also objected, that by the 8.
 Act. Parl. 1. *Ja.* 6. It is provided in *Scotland*,
 that all Kings and Princes that shall happen
 to reigne and bear Rule over that Kingdom,
 shall at the time of their Coronation, make
 their faithfull promise by Oath in presence
 of eternal God, that they shall maintaine
 the true Religion of *Iesus Christ*, the prea-
 ching of the Holy Word, and due and Right
 Administration of the Sacraments now re-
 ceived and preach'd within this Kingdom;
 from which two conclusions may be inferr'd,
 1. That by that Act the Successor to the
 Crown may be restricted. 2. That the Suc-
 cessor to the Crown must be a Protestant,
 that being the Religion which was Professed
 and established the time of this Act.

To which it is answered, that this Act re-

lates only to the Crowning of the King, and not to the Succession. Nor is a coronation absolutely necessary, *Coronatio enim magis est ad ostentationem, quam ad necessitatem. Nec ideo Rex est quia coronatur, sed coronatur quia Rex est. Oldard: consil. 90. num. 7. Balbus lib. de coronat. pag 40.* Nor do we read that any Kings were Crown'd in Scripture except *Ioas*. And *Clovis* King of *France* was the first, who was Crown'd in *Europe*. Nor are any Kings of *Spaine* Crown'd till this day. Neither is ane Coronation Oath requisite; *Sisenandus* being the first who in the 4. Tolletan Council gave such an Oath amongst the *Christians*, as *Trajan* was the first amongst the heathen Emperours. And we having had no Coronation Oath till the Reigne of King *Gregorie*, which was in *Anno* 879, he having found the Kingdom free from all Restrictions, could not have limited his Successor, or at least could not have debarr'd him by an Oath. *Nullam enim poterat legem dictare posteris, cum par in parem non habeat imperium*, as our *Blackwood* observes. pag. 13.

(2.) There is no clause irritant in this Act debarring the Successor, or declaring the Succession null in case his Successor gave not this Oath. 3. The Lawfull Successor though he were of a different Religion from his People

People (as God forbid he should be) may easily swear, that he shall maintaine the Laws presently standing. And any Parliament may legally secure the Successor from overturning their Religion or Laws, though they cannot debarre him. And though the Successor did not swear to maintaine the Laws, Yet are they in little danger by his Succession; since all Acts of Parliament stand in force, till they be repeal'd by subsequent Parliaments: And the King cannot repeale an Act without the consent of Parliament. But to put this beyond all debate, the 2. Act of this current Parliament is opposed, whereby it is declared, *that the Right and administration of the Government is immediatly devolv'd upon the next Lawfull Heir after the death of the King or Queen, and that no difference in Religion, nor no Law nor Act of Parliament can stop or hinder them in the free and actual administration*; which is an abrogation of the foresaid Act concerning the Coronation as to this point: for how can the administration be devolv'd immediatly upon the Successor, if he cannot administrat till he be Crown'd, and have sworn this Oath.

The next objection is, that since the King and Parl. may by Act of Parl. alter the Successions of privat families though transmitted by the

the Right of blood, why may they not alter the Succession in the Royal family?

To which it is answered, that the reason of the difference lyes in this, that the Heirs of the Crown owe not their Succession to Parliaments: for they succeed by the Laws of God, nature, and the Fundamental Laws of the nation; whereas privat Families are Subject to Parliaments, and inferiour to them, and owe their privat Rights to a municipal Law, and so may and ought in point of Right to be regulated by them. And yet I am very clear, that a Parliament cannot arbitrarily debarr the eldest Son of a privat Family, and devolve the Succession upon the younger: and if they did so, their Acts would be null. But if this argument were good, we might as well conclude by it, that no persone born out of *England*, or attainted of treason could succeed to the Crown; Because he could not succeed to a privat Estate. All which and many more instances do clearly demonstrat that the Successor to the Crown cannot be debarr'd, nor the Succession to the Crown diverted by Act of Parliament.

The last objection is, that *Robert* the III. King of *Scotland*, was by ane Act of Parliament prefer'd to *David* and *Walter*, who were

(as he pretends) were truly the eldest lawful Sons of *Robert* the 2^d. because *Euphan* Daughter to the Earl of *Ross* was first lawful Wife to King *Robert* the 2^d. and she bore him *David* Earl of *Strathern*, and *Walter* Earl of *Athol*, *Alexander* Earl of *Buchan*, and *Euphan* who was married to *James* Earl of *Douglafs*, after whose decease he married *Elizabeth Muir*, Daughter to Sir *Adam Muir* ; not so much (as *Buchanan* observes) from any design to marry a second Wife, as from the great love he carried to *Elizabeth Muir*, whom because of her extraordinary Beauty he had lov'd very passionatly in his youth, and before he married the Earl of *Rosses* Daughter, and from the love which he bore to the Sons whom *Elizabeth* had born before that first Marriage, who were *John* Earl of *Carrick* (who thereafter succeeded to the Crown by the Title of *Robert* the 3^d.) and *Robert* Earl of *Fife* and *Monteth*, he prevail'd with the Parliament to prefer *John* eldest Son by *Elizabeth Muir*, to the two Sons which he had by the Earl of *Rosses* Daughter, who was (as they pretend) his first lawful Wife.

In which though I might debate many nice points of Law relating to this Subject;

D

yet

yet I choose only to insist on these few convincing Answers.

1. That in a Case of so great moment Historians should be little credited, except they could have produc'd very infallible Documents; and as in general one Historian may make all who succeed him err, so in this Case *Boetius* (who was the first) liv'd and wrot 200 years after the Marriage of King *Robert* the 2^d, and wrot his History at *Aberdeen*, very remote from the Registers and Records by which he should have instructed himself; nor did he know the importance of this point, having touch'd it only transiently, though it has been design'dly press'd by *Buchanan*, to evince that the Parliaments of *Scotland* might prefer any of the Royal Line they pleas'd; and it is indeed probable that King *Robert* the 2^d. did for some time make no great noise of his first Marriage with *Elizabeth* *Atair*, least the meanness of the Match should have weaken'd his Interest upon his first coming to the Crown, he being himself the first of the Race of the *Stewarts*, and having so strong Competitors as the Earl of *Dowglass*, who claim'd Right to the Crown in the Right of the *Bailol* and the *Comwings*, as *Boetius* himself observes.

2. King

2. King *Robert* the 3^d. having succeeded as the eldest lawful Son, and having been receiv'd as such by that Parliament, and his Posterity by all succeeding Parliaments, the Possession of the King and the Acquiescence of the People is the most infallible proof that can be adduc'd for proving that *Robert* was the eldest lawful Son, nor have most Kings in *Europe*, or the Heads of most private Families any other proof of their being the eldest and lawful Sons, save that they succeeded and were acknowledg'd as such.

3. To ballance the authority of these Historians, I shall produce the Testimonie of the Learned Sir *Lewis Stewart*, one of the most famous Lawyers we ever had, and who ought much more to be believ'd than *Buchanan*, not only because he was more disinterested, but because he founds upon Acts of Parliament and old Charters which he himself had seen in the Registers, in which *Elizabeth Muir* is acknowledg'd to have been the first Wife. *Buchanani lib.*

9. in vitam Roberti 2. affirmat Euphaniem Comitiss Rossensis filiam primam Regis Roberti 2. uxorem fuisse & eâ mortuâ, Regem superinduxisse Elizabetham Moram ex qua prius Liberos ternos natos suscepisset, & eam uxorem

rem duxisse, ejusque liberos regno destinasse, ut postea eorum natu maximus successit quod quam falsum sit, apparet ex archivis in ecclesia Edinburgensi reconditis, ubi exstant separata acta duorum Parliamentorum, subscripta manibus Ecclesiasticorum praesulum, nobilium, baronum, & aliorum statuum Parliamenti, & eorum sigillis roborata, quibus Elizabetha Mora agnoscitur prima uxor, & Euphania Rosse secunda, & liberis ex Elizabetha Mora tanquam justis heredibus Regni, successive regnum d'cernitur, & post eos liberis Euphaniae Rosse nec non ibidem carta extant plurima facta per Davidem secundum, eorum patrum magnum ex diversis terminis, Ioanni filio primogenito, nepotis ejus Roberti, dum Euphania Rosse vivit nec non Davidi filio natu maximo Euphaniae Rosse quem solum filium indigitat Roberti nepotis, quod non fecisset si Elizabetha Mora non prius fuisset nupta Roberto ejus nepoti, nam primogenitus nunquam attribuitur notho imo ego plures quam viginti cartas in archivis invenit, ubi etiam eas reliqui, ex quibus salutariter elucet, Elizabetham Moram primam fuisse uxorem, & Euphaniem Rosse secundam, nam extra contraversiam, liberi Elizabethae Morae etate maiores erant liberis Euphaniae Rosse : which Paper I did get from

from the Lord *Pirmediu*, who has himself written some learn'd Observations upon this point.

4. I have my self seen an Act of Parliament (found out by the industry of Sir *George Mackenzie* of *Tarbet*, now Lord Register) having the intire Seals of the Members of Parliament appended thereto; by which the Parliament do swear Allegiance to *Robert* the 2^d. the first King of the Race of the *Stewarts*; and after him *Roberto Comiti de Carriët, filio suo nato maximo* (his eldest Son) in *Anno* 1371, which was the first year of his Reign; and if the pretended defect be true, it was a very palpable, and a very undeniable one, and could not but have been unanswerably known to the whole Nation. And how can we imagine, that the whole Parliament would have unanimously drawn upon themselves so dreadful a Perjury, by excluding the lawful Heir, against their National Oath in the Reign of *K. Kenneth* the 3^d, whereby they swore to own always the immediate Heir, or that they would have entail'd upon themselves a Civil War, by preferring even a questionable Heir, after the Miseries which they had lately then felt, in the competition betwixt the *Bruce* and the

the *Balliol*. Amongst which Seals, the Seal of *James Earl of Douglas* is one, and how ridiculous is it to think, that he would sit and declare a Bastard preferable to the Brother of his own Lady, and to his own Lady who would have succeeded if her Brothers had died without Succession : Which Act of Parliament does also clearly prove, that *Buchanan* did not at all understand matters of Fact in this part of the History, for he asserts, that after the death of *Euphan Ross*, the King married *Elizabeth Muir*, and did by Act of Parliament obtain the Crown to be settled upon *Robert* the 3^d, Son to the said *Elizabeth Muir*, upon whom he also bestow'd the Title of *Carriek* ; all which is most false, for this Act of Parliament is dated in *Anno* 1371, and King *Robert* the 2^d. succeeded to the Crown that year, nor did *Euphan Ross* die till the 3^d. year after he succeeded to the Crown, and so not till the Year 1374, and yet in *Anno* 1371 this Act is pass'd, designing him Heir to the Crown, and Earl of *Carriek*, and consequently he was so design'd before the death of *Euphan Ross*.

5. I have seen a Charter granted by King *Robert* the 2^d, when he was only Steward of *Scotland*, granted in *anno* 1165, and

and so long before he was King. In which Charter likewise, *John*, thereafter King, by the name of *Robert* the 3^d, is a conjunct Disponer with him, under the express designation of the eldest Son and Heir. *Robertus Senescallus Scotiæ, Comes de Strathern, & Ioannes Senescallus primogenitus & heres ipsius Dominus Baronia de Kyle, &c.* which Charter confirms to the Abbacy of *Rasley* several Lands disposed to them, by *Reginaldus More*, Father to Sir *William More* of *Abercorn*. And I find that *David* Duke of *Rathsay*, was always in the Charters granted by his Father King *Robert* the first, called *Primogenitus*, and he was no Bastard, nor can this designation be given to a Bastard, as is clear by *Covarruvias de Matrim. part. 2. cap. 8. §. 2. num. 4.* But how can it be imagined that the Monks of *Rasley* would have taken a Right from a person as Heir to the Crown, who was not: for this would have infer'd Treason against them, beside the annulling their Right, or who could understand better the lawfulness of a Marriage, than a body of Church-men, living in the time, and very near to the Residence of the married Persons, and in whose Conventual-Church the said King *Robert* and *Elizabeth* ~~Admir~~ *Admir* ly buried together,

6, In

Item, I have seen in the Registers another Charter granted by King *Robert* the 2. in the first year of his Reign, with the consent of *John* Earl of *Carrick*, *primogenitus & heres*, *Allano de Lavidia terrarum de Whittlet*; And an other granted by the said King, 1. June, *anno primo regni*, confirming to *Paulo McTire* a Charter granted by the Earl of *Ross*, Father to *Euphan*, wherein the said *John primogenitus & heres*, is a Witness: And to shew that the said *Euphan Ross* was then living when he was so design'd Heir, there is a Charter to her by the King upon the very same day of the Lands of *Lochleaven*. As also, there is a Charter granted by King *Robert* the 2d, the first year of his Reign, to *Alexander* his Son, and another to *John Kennedy* of the Barrony of *Dalrymple*, in both which the said *John* Earl of *Carrick* is call'd *primogenitus*, and is Witness with the Earl of *Dowglass*; so that he has been design'd eldest Son and Heir, openly, uncontravertedly, and in all Papers, and with the consent of the second Wife and her Relations.

6. In the Parliament 1372, the said *John* Earl of *Carrick* is design'd to be Lieutenant of the Kingdom, and all the Estates of

of Parliament swear to own him in his Government, and which Statute is printed amongst the Statutes of King *Robert* the 3^d, Father to the said *John*, and which must be during the Marriage with *Euphan Ross*, for she liv'd three years after her Husband was King, and he succeeded to the Crown *anno* 1371: And this also confutes *Buchanan*, who asserts, that he was created Earl of *Carrick* after the death of *Euphan Ross*, and it is against all sense and reason to think that he could have been acknowledg'd during her life, if he had not been the true Apparent Heir of the Crown and a lawful Son.

7. *Walter* (who they pretend should have succeeded to the Crown,) having kill'd his Nephew King *James* the first, Son to King *Robert* the 3^d; He was not only not own'd after the death of the said King *James*, as certainly he had been if his Title had been good, and his Right so recent and demonstrable, having so many great and powerful Relations, that his Father was induc'd upon their account to marry his Mother; but yet the said *Walter* was by all the Parliament unanimously condemn'd as a Traitor, for having conspir'd the death of his lawful Prince. Nor does

Robertus justifie *Walter's* Title in the least, but on the contrary, magnifies the Parliament for their just Sentence. As did likewise *Aeneas Silvius* the Popes learned Legat, who exhorted the Parliament to condemn him.

8. How is it imaginable, that King *Robert* who had so lately, and after a strong competition come to the Crown, would have adventur'd to make his Title yet more disputable, by preferring a Bastard to the true Heir, who had so many Friends by his Mother, and who being an Infant had never disoblig'd him.

9. If we will consider the opinion of the *Civilians*, whom we and almost all Nations follow in the Cases of Succession, we will find, that the said King *Robert* the 3^d was the eldest and lawful Son of King *Robert* the 2^d. *filius legitimus, & non legitimus*. For, 1. They conclude, that a Son is prov'd to be a lawful Son by the Assertion of the Father, *Alciat tract. presumpt. Reg. 2. presumpt. 2. num. 6.* and certainly the Father is the best Judge in such Cases; but so it is we have the Father owning the said *Robert* the 3^d. to be his eldest Son and Heir, both in Charters and Acts of Parliaments, which are the most solemn of all Deeds. 2. *Quando pater*

pater instituit aliquem tanquam filium suum, which holds in this Case, where the Father institutes and leaves him Heir, and the Parliament swears Allegiance to him as the Heir, *Mascard. de prob. vol. 2. conclus. 799.* And in dubious Cases, the Father's naming such a man as a Son, presumes him to be a lawful Son, *nominatio parentis inducit filiationem in dubio, l. ex facto §. si quis Rogatus ff. ad trebell.* 3. Even Fame, and the common opinion of the People, do in favours of these that are in Possession, and in ancient Cases, prove *& filiationem, & legitimatorem*, *Mascard. conclus. 792.* but much more, where the Fame and common Opinion is adminiculated by other Arguments, *fulgos consil. 128. Panorm. in cap. transmiss. qui filii sunt legitimi.* 4. When Writs are produc'd, calling a man a Son, the Law concludes him to be a lawful Son. *Mascard. vol. 2. conclus. 800. num 15.* all which can be easily subsum'd in our Case. In which Robert the 3^d. is nam'd not only Son, but Heir, and Allegiance sworn to him, even in the lifetime of the second Wife and her Relations sitting in Parliament, and all this acquiesc'd in for many hundreds of years, and the Competitors punish'd as Traitors by the unanimous consent of all the Parliament, I

I know that *Buchanan* does most bitterly inveigh against those Laws made by King *Kenneth* the 3^d, as Laws whereby the ancient Right of Succession was innovated, and whereby the Government was settled upon Children who were neither able to consult with the People, nor to defend them, and whereby those had the Government of the Nation conferr'd upon them who were not capable to govern themselves.

To which my answer is, That in this *Buchanan's* Malice contradicts his History, for his own History tells us, that the *Scots* swore Allegiance to *Fergus* and his Posterity; and consequently *Fergus's* Son ought by Law to have succeeded, and not his Brother, for his Brother was none of his Posterity, and therefore those Laws made by *K. Kenneth* did but renew the old Law, and the innovation introduc'd in favours of the Uncles, was a subversion of the fundamental Law to which they had sworn.

2. That the old Law was not abrogated, but was in Being by vertue of the first Oath, appears very clear by *Buchanan* himself, who confesses, that upon the death of *Durſtus*, a wicked Prince, it was debated whether his Son should not succeed

juxta

juxta sacramentum Fergusio *prestatum voto;*
reque esse morem servandum, which ac-
 knowledgeth that the Succession was even
 in these days established by Law, by Oath,
 and by Custom; and after the death of
 Fergus the 2^d, his Son *Eugenius* (though
 a Minor) was crown'd, and his Uncle
Gremus allow'd to be his Tutor. And
Buchanan also brings in Bishop *Kenna-*
dy, lib. 12. praising this Law as made by
Kenneth, a most wise and glorious Prince,
 with advice of all his Estates of Parliament;
 and which rather confirms (as he says) the
 old Law than introduces a new one, so
 far did *Buchanan's* rage against Queen *Ma-*
ry prevail with him, to praise and rail at
 the same individual Law; and it is observ-
 able, that it is very dangerous to recede
 once from fundamental Laws, for *Buchanan*
 makes not only the Succession Elective;
 but he makes no difference betwixt lawful
 Children and Bastards, and excludes not
 only Minors during the Uncles life, but Wo-
 men for ever. 3. In all Nations where the
 Monarchy is Hereditary, Minors succeed,
 and so this innovation of causing the next
 Male succeed for all his Life, was contrary
 to the nature of the Monarchy and to the
 Customs of all Nations, and God in Scri-
 pture

pture gives us many instances of it : *Jahs* succeeded when he was seven years of Age, *Josiah* when he was eight, *Manasseh* in twelve, and *Azariah* in sixteen ; and yet in those days, God is said to have chosen the King, for it is said in *Deut.* *Thou shalt set over thee, the King whom I have chosen,* and consequently the choice of Minors cannot be ill, since God Almighty us'd to make such a choice. I know that *Ecclesi* 10. 16. says, *Woe unto the land when thy King is a child,* but the Criticks interpret this of a King that is childish, *puer intellectu & moribus*, or because Factions arise by the opposition to his Regents, and this inconveniency did more necessarily attend the allowing a Regent King during Life, for both the Subjects and the true Heir rais'd Factions in that Case, whereas the Subjects only are factious in the other, and yet even they are no more factious for that short time, than they are always in Commonwealths. 4. The reason why the Minor King was to have one to supply his Nonage ceasing with his Majority, it was unreasonable that the Remedy should have lasted beyond the Disease, and the worst effect that could have been occasion'd by the Infant King's Minority was, that the Kingdom

Kingdom should have been during that time govern'd by joynt advice of Parliament, Councils, and Officers of State, which in *Buchanan's* opinion in other places of his History and Book *De Jure Regni*, is so excellent a Model, that he decrys Monarchy as much inferior to it. 5. It was most inconvenient to accustom any private Family to live in the quality of a King. 6. It could not but occasion many Murders, and much Faction, for the true Heir could not live peaceably under this Eclipse and Exclusion, nor could the Uncle live without making a Party to secure his pleasant Usurpation. 7. As these Divisions and Factions were the natural and necessary Effects that were to be expected from this irregular Succession, so it is very observable, that from King *Fergus* to King *Kenneth* the 3^d, we had 79. Kings, amongst whom, almost the half were the most impious, tyranical, or lazie Kings that ever we had, according to *Buchanan's* character of them; so happy and wise a thing is this (so much magnified) Election of a Successor by the People and their Representatives, to supply the defects of the lawful Heir, whereas from King *Kenneth* the 3^d, to King *CHARLES* the 2^d. *inclusive*, we have

have had 31. Kings, 26. of whom have succeeded by a due lineal Right, and have prov'd vertuous Princes, greater by their Merit than their Birth, as if God had design'd to let us see, that though most of them succeeded whilst they were very young, yet that he can choole a fitter Successor than Parliaments can do; whereas the other 5. Kings who came to the Crown against that Law of *Kenneth the 3d, viz. Constantine the bald, Grimus, Mackbeath, Donald Bann, and Duncan the 2d*, were all persons who deserved very ill to be preferred to the true Heir, and who, as they came to the Crown against Law, so govern'd without it: And it is very strange, that the *Fanaticks*, who think that every throw of the Dice is influenc'd by a special Providence, will not allow, that God does by a special Providence take care who shall be his Representative, who shall be the Pastor of his Flock, and nursing Father of his Church; let us therefore trust his Care more than our own, and hope to obtain more from him by Christian Submission, Humility and Obedience than we can by Caballing, Rebelling, and Sacrilegious Murdering, or Excluding the true Successor.

F I N I S.

What follows is immediately to be
subjoin'd to the Testimony of
Calvin, Page 90.

I Know that to this it may be answered,
That the same Calvin does qualifie his
own words, which I have cited with this
following Caution, *Si qui sunt* (saith he)
populares magistratus, ad moderandam Re-
gum libidinem constituti (quales olim erant
qui Lacedemoniis regibus oppositi erant ephori;
& quæ etiam fortè potestate (ut nunc res ha-
bent) funguntur in singulis regnis, tres ordines;
quum primarios conventus peragunt) adeo il-
lus ferociens Regum licentia, pro officio inter-
cedere non veto; ut si Regibus impotenter
grassantibus, & humili plebeculæ insultanti-
bus conniveant, eorum dissimulationem nefa-
riâ perfidiâ non carere affirmam; quia populi
libertatem, cuius se tutores Dei ordinatione
positos norunt, fraudulenter produnt.

To which my reply is, That these words
must be so constructed, as that they may
not be inconsistent with his former clear and

F

Orthodox

Orthodox Doctrine, of not resisting Supreme Powers, the former being his positive Doctrine, and this but a supervenient Caution, and they do very well consist; for though *Cato* be very clear, that Kings cannot be resisted, yet he thinks that this is only to be mean'd of those Kings who have no Superiors to check them by Law, as the Kings of the *Lacedæmonians* had, who by the fundamental Constitution of their Monarchy, might have been call'd to an account by the *Ephori*, and so in effect were only Titular Kings: Or of such Monarchs as had only a co-ordinate Power with the States of their own Kingdom; and even in these Cases, he does not positively assert, that these Monarchs may be resisted, but does only doubt whether if there be any such Superior or co-ordinate Magistrate representing the People, they may not restrain the Rage and Licentiousness of their Kings: But that Caution does not at all concern the *Jus Regni apud Scotos*, because this cannot be said of the Kings of Great Britain, since the States of Parliament are only call'd by the King, and derive their Authority from him, and the Legislative Power is solely in the King, the States of Parliament being only Consenters, he

he and not they can only make Peace and War, and grant Remissions, and against him and not them Treason only is committed, and the Law Books of both Nations do affirm, that the King is Supream, and consequently even according to *Calvin's* Doctrine, neither his People, nor any of their Representatives, can justly oppose, and much less punish him.

I know that *Grotius* is by the Republicans, and the Fanaticks, oft-times cited to defend this their Doctrine, of opposing Princes; but though his Testimony might be justly rejected, as being himself born under a Commonwealth, yet he is most impudently cited, for he *lib. 1. cap. 4.* does positively lay down as a general and undoubted Rule, that *Summum imperium re-nentibus, resisti non potest*, Those who have the Supream Power cannot lawfully be resisted; which Rule he founds upon the Principles of Reason, the Authority of Scripture, and the Practice of the Primitive Church; and though he limits the same thereafter by some exceptions, yet it will easily appear, that these exceptions extend not at all to our Case.

For the first relates only to such Kings, as have receiv'd their Power with express condition,

condition, that they may be try'd by other Magistrates.

The *second* to such as have voluntarily resign'd their Empire, as *Charles the 5th.* did; and so the one may be oppos'd, because they were only Titular Kings: and the other, because they left off to be Kings, and consequently we are concerned in neither of these Cases.

The *third* limitation is only in the Case where he who was truly a King, has alienated his Kingdom to Strangers; In which Case, *Grotius* does contend, that Subjects may refuse to obey, because he ceaseth to be their King. But as this is not our Case, so even in that Case *Grotius* is very clear, that if this alienation be made by an Hereditary Monarch, the alienation is null, as being done in prejudice of the lawful Successor, but he does not at all assert that the Monarch may be thereupon depos'd by his People.

The *fourth* relates only to such Kings, as from a hatred to their Countrey, design its Destruction and utter Ruine; but as he confesseth himself, *Id vix accidere potest in Rege mentis compote*; and consequently can take only place in a mad Man, in which Case all Laws allow the Kingdom to be rul'd

rol'd by Governours, and Administration
in the King's Name, if the Madnes be Na-
tural; and a total depravation of Sense.
But if by Madnes be mean'd a moral Mad-
nes, and design to ruine the Kingdom and
the Subjects, as was, and is most impiously
pretended against King CHARLES the first,
and King CHARLES the 2^d, the best and
most reasonable of Kings; then Opposition
in such Cases is not at all warranted by
Grotius, who speaks only of a Physical and
Natural Madnes; for else, every thing
that displeaseth the People should be call'd
Madnes; and so the exception should not
limit but overturn the general rule, and
should arm all Subjects to rebel against
their Princes, and make them the Sovereign
Judges in all Cases. Which is inconsistent
with *Grotius's* own Doctrine, and is ex-
cellently refuted by his own Reasons.

The *fifth* relates only to Kings, who by
the fundamental Laws of the Kingdom are
ty'd to such and such Conditions, so as that
if they fail in them, they may be oppos'd.

The *sixth* relates only to Kingdoms
where the Power is equally devided be-
twixt the King and the Senate.

The *seventh* is in case the King was at first
invested by the People, with expres re-
servation

reservation to them to resist in such and such Cases, and so is almost the same with the fifth, and all these three differ little from the first. And with *Grotius* good leave, they err also in this, that they are not properly exceptions from his own rule, for the rule being only, that Supream Powers cannot be resisted, these Powers are not Supream, and they needed not be caution'd by an exception, since they did not fall under the rule. But neither of these Cases extend to us, since our King is by the Acts of Parliament formerly cited, declared to be Supream over all Persons and in all Causes, nor made our Predecessors any such express reservations at the first erection of the Monarchy, and consequently by *Grotius* own positive Doctrine cannot be resisted. And so far is *Grotius* an enemy to such Fanatical Resistance, upon the pretence of Liberty and Religion, that *num. 6.* he calls the Authors of these Opinions, Time Servers only. And *Gronovius* a violent Republican and Fanatick, taxes him extremely for it, in his Observations upon that fourth Chapter, whose Arguments adduc'd against *Grotius* I shall answer amongst the other Objections.

Gronovius's

Gronovius's first Argument why it should be lawful to resist the Supream Magistrate in defence of Religion, is, because if it be not lawful for Subjects to Arm themselves for Religion against their Prince, it should not be lawful for their Prince by the same rule to defend himself against *Turks* and *Infidels*, who would endeavour to force him to comply with their Impieties. But to this it is answered, That Resistance to Superiors is expressly discharg'd by the Laws of God and Nature, as said is, but this cannot be extended to Cases where there is no Subjection nor Allegiance, and it may be as well argu'd, that because one private man may beat another who offers to strike him, that therefore a Child may beat his Parent, or a Servant his Master, or that because I may violently resist a private man who offers to take away my Goods unjustly, that therefore I may oppose the Sentence of the Magistrat, because I forsooth do not think the same just.

His second shift is, That our Saviour commanded only absolute submission without resistance in the Infancy of the Church when he himself was miraculously to assist his own Servants, but this Submission was to end with the Miracles, to which it related.

lated. As to which, my answer is, 1. That all the Commands in Scripture may be so e-
 luded, nor is there any Duty more frequently and fully inculcated than this is, and
 that too in the same Chapters amongst other
 Duties, which are to last for ever, such
 as submission to Parents, and Masters, and
 this is founded upon plain reason and con-
 veniency, and not upon Miracles. 2. This
 was receiv'd and acknowledg'd by the *Pa-*
gans, as has been fully prov'd, though it
 cannot be pretended that they rely'd upon
 any such miraculous assistance. 3. It can-
 not be deny'd but the Fathers of the Pri-
 mitive Church did recommend and justify
 themselves in their Apologies to the Hea-
 then Emperors for bearing patiently, when
 they were able not only to have resisted,
 but to have overthrown their Persecutors,
 as is clear by the Citations out of *Tertullian*,
Cyprian, *Lactantius*, *Augustine*, and others,
 to be seen in *Grotius*, *De Jure Belli*, lib. 1.
cap. 4. num. 7. And it had been great impu-
 dence as well as sin in them, to have boast-
 ed of a recent matter of Fact, which was not
 true; nor could there be a greater injury
 done to the Primitive Christians, as *Gro-*
tius observes, than to ascribe that to their
 Weakness, which they consider'd as an ef-
 fect

fect of Duty ; and why should the Heathen Emperors have suffered those to multiply, who obey'd only because Disobedience was not safe, for they might have certainly concluded, that by the same Principle that they obeyed only because they were weak, they would disobey how soon they were able. 4. If the first Christians in general had obeyed only because they were not able to resist, then any private Christian had resisted when he was able, or would have fled or conceal'd himself, whereas it is acknowledg'd in the other Answer press'd by *Gronovius* himself, that they sought for Martyrdom, and so these two Answers are inconsistent; and the *Thebean Legion*, and others, did submit themselves voluntarily to Martyrdom with their Arms in their hands, and when they were able to have overthrow the Emperor. And lastly, If this Doctrine were allow'd, no Society could subsist, for when Dissenters grew strong, the lawful Magistrat behov'd to perish; whereas Jesus Christ did contrive the Christian Religion; so as that all Governours should reasonably with their Subjects to be Christians; and so as no Christian should attempt to overthrow the order and establishment of Civil Government, and that they

G

should

should not be drawn away from the practice of Christian Devotion by the carnal desires of being great and strong in the World, nor have any hopes in the Arm of Flesh to the lessening of their immediate dependence upon him.

His third shift is, That his Doctrine of Submission and of dying for the Christian Religion without making Resistance, was only the Practice, but not the Command of the Primitive Church, and proceeded from their immoderat affectation of the Crown of Martyrdom, as *Milntown* also pretends. But since the expresse Command of Scripture is founded upon such clear Reason, and since (as *Grotius* well observes) the Practice of the Primitive Christians, who liv'd so near the Age wherein these Scriptures were pen'd, is the best Interpreter of the Scripture, it is horrid Impiety to make those blessed Martyrs pass for vain Hypocrites, and distracted Self-murderers; and it becomes us with holy reverence to imitate those whom the Christian Church has ever admir'd.

The fourth shift is, That the Protestant Churches have been reform'd by such Insurrections as these, contrary to the Royal Authority. But this is fully answered by the
the

the learned *Henry More* in his *Divine Dialogues*, and by *Du Moulin* in his *Philanax Anglicus* ; where likewise are to be found the many Testimonies of Protestant Churches, and Protestant Divines, condemning positively the taking up of Arms against the Sovereign Power, even for the defence of Religion ; and the very *Presbyterian Confession of Faith at Westminster*, is so positive as to this point, that the *Presbyterians* themselves can never answer it. The sum of which answer is, That the King of *Spain* coming by Marriage in place of the Duke of *Burgundy*, the said King of *Spain* could pretend to no more power than they had, nor could the House of *Burgundy* pretend to any more power by marrying the Heirs of the Counts of the several Provinces, than these Counts had over their Provinces ; and therefore since none of these were Sovereigns over their Provinces, the Provinces might have resisted the King of *Spain* when he oppress'd them ; and consequently that Resistance cannot defend such as resist Supream Powers upon pretence of Religion, *Grotius de Antiq. Reipub. Batav. cap. 7.*

The opposition made by the Protestants in *France*, was not occasion'd by Religion, but upon a Quarrel betwixt the Princes of
the

the Blood and the House of *Guise* in the Minority of *Francis* the 2^d, and is defended most excellently by King *James* himself, not to have been Rebellion, in his *Defence of the Right of Kings*, pag. 14.

The Opposition made by the Princes of *Germany* to the Emperor, was founded upon the inherent Right in the Princes, by the golden Charter of the Empire. And *Luther* himself declar'd, that *Magistratus non erat resistendum*, and has written a Book to that purpose ; nor would he engage in the Confederacy for Defensive Arms at *Smalcald*, until the Lawyers declared that that Resistance was lawful by the Laws of the Empire, *Vide Slydan Hist. lib. 8. anno 1531.*

The War that arose in *Switzerland*, was not occasion'd by Religion ; for the Reformation was once establish'd with the consent of the Magistrat. And the Eruption that was made by other *Cantons* upon the Reform'd *Cantons* eleven years after that Establishment, *Vide Slydan, anno 1522.* Nor was it *Calvin* who banish'd the Prince and Bishop of *Geneva*, for he fled eight Months before upon the detecting of a Conspiracy, by which that Bishop was to deliver over the Liberties of that City to the Duke of

of *Saroy*, and for which his Secretary was hang'd, *Vide Turretin. Annal. Reformationis, anno 1529.* And albeit those who Reform'd in *Scotland*, in the Reign of Queen *Mary*, pretended Authority from the King, yet they were certainly Rebels, and are condem'd by *Rivet*, a famous Protestant Divine, who also inveighs bitterly against this Principle, *Castiga Not. in Epist. ad Balsac. cap. 13. num. 14. sub finem.*

From all which, I observe, First, That all the Protestant Divines by making Apologies for such of their Profession as have risen in Arms against Supream Powers, must be thereby concluded to be asham'd of the Principle. 2. Immediately upon the quieting those Rebellions, all the Protestant Churches have in their *Confessions of Faith*, declared their abhorrence of that Principle; which being the product of Conviction and Experience, joyn'd with Duty, must be the most judicious and sincere Testimony of all others. 3. All these Rebellions have been occasion'd by a mistake in point of Law, and not in point of Religion; for the Divines, as I have related, have been abused by the Lawyers: And therefore, since in the Isle of *Britain*, the Laws of both Kingdoms have declared
the

the Rising in Arms against the King, to be Treason, albeit for the defence of Religion ; it necessarily follows, that this must be unlawful in point of Conscience in this Kingdom. 4. Though good things may be occasion'd by a Rebellion, yet that does not justify a Rebellion ; for though *Jereboam* was allow'd by God to rise against *Rehoboam*, yet God Almighty himself calls his revolt Rebellion, *1 Kings 12. 19.* and *2 Chron. 10. 19.* and it is observable, that after this Revolt, there was but one good King amongst all the rebellious Kings of *Israel*, whereas amongst the Kings of *Judah*, who were lawful Kings, there was but one or two who were any ways impious ; so far does God bless a lawful Succession.

Some also use as a shift against this Orthodox Doctrine, that the reason why the Primitive Christians did not oppose their Emperors in the defence of the Christian Religion, was, because they had not been secured at that time in the Exercise of their Religion by the Laws of the Empire ; and therefore the practice of those Christians can be no Argument why we may not now rise to defend the Orthodox Religion, since it is now established by Law. But this Objection is fully answered by that great great

great Antiquary *Samuel Petit*. *Diatriba de Fur. Principum editis Ecclesie quaestio*, where he clearly proves, that they were actually secured by the Edicts of the Emperors in the days of the Emperor *Tiberius*, and downward, and yet they would not rise in Arms though they were persecuted under these same Emperors, because the Word of God and the Christian Religion did command Obedience under Persecution, and discharged Resistance and taking up of Arms.

Add to Page 73.

I have also seen in *Fordon's History*, lib. 14. pag. 73. a Charter granted by King *David* to the Bishops, with the consent of *Robert* his Nephew, and his Sons giving power to the Bishops to dispoise in Testament upon their own Moveables, which before that time did by a corrupt custom fall to the King, in which Charter, the Witnesses are, *Robertus Senescallus Comes de Strathern*, *Nepos noster Ioannes Senescallus Comes de Carrick*, *filius suus primogenitus & haeres*, *Thomas Comes de Mar*, *Georgius de Dunbar*, *Comes de March*, & *Gulielmus Comes de Dowglass*; so that here is not only the attestation of the Father before he was King, naming *John Earl of Carrick*, thereafter King *Robert*

bert the 2d. his eldest Son and Heir, but the attestation of the Grand-Uncle King *David*, who could be no ways byassed in the Affair; and here he is ranked before the three eldest Earls in the Nation, who were then the three first Subjects therein; and it is against all Sense, to think that the whole Bishops would have sought the consent of the said *John* as Apparent Heir of the Crown, if he had not been Apparent Heir. I find also, that *Fordon* calls him when he is crown'd King, *Primogenitus Roberti secundi*; nor was there the least opposition made to his Coronation, nor to the Coronation of *Annabella Drummond* his Queen (a Daughter of the House of *Stob-hall*, now *Pearth*,) though both the Sons of the second Marriage were then alive. I find also, that *Boetius* himself acknowledges, that the Earl of *Marches* Son *George*, being pursu'd for having married clandestinely one of the Daughters of *Elizabeth Muir*, his defence was, that he married her when she was the Daughter of a private Subject, and before King *Robert* was King, whereas if she had been only a Bastard-Daughter, it could have been no Crime to have married her.

